Dept of the Attorney General

REPORT OF THE COMMISSION OF INQUIRY

IN THE MATTER OF MR. WILSON D. PARASIUK.

THE ISSUE BEFORE THE COMMISSION

The central issue confronting the Commission on this Inquiry, which relates to the Limestone Project in Northern Manitoba, is one of conflict of interest. Specifically, that issue calls for a determination whether Mr. Wilson Parasiuk, the member of the Legislative Assembly of Manitoba representing the electoral district of Transcona and who, until his resignation on May 19th, 1986, was the Minister of Energy and Mines, the Minister responsible for the administration of the Manitoba Hydro Act, a member of the Treasury Board and a member of Executive Council, had acted improperly and in conflict of interest with respect to:

(a) a consulting contract awarded by the Manitoba Energy Authority, a Crown Corporation, in fiscal year 1984/85 to WMC Research Associates (Manitoba) Ltd., and

(b) his interest in certain real property in the City of Winnipeg, commonly described as 115 Bannatyne Avenue (The Brokerage).

The language embodying the charge, if we may call it that, suggests two forms of wrongdoing, namely, acting improperly and acting in conflict of interest. But the case (such as it was) as

it unfolded rested on or was related to conflict of interest solely. So if improper conduct is to be found here at all it will have to be found in relation to conflict of interest and not elsewhere.

What is conflict of interest? When does it arise? How does it apply to persons holding public office? Our starting point for the answers to those questions may well be the statutory enactment dealing with the subject, namely, "The Legislative Assembly and Executive Council Conflict of Interest Act". C.C.S.M. Cap. L 112. That statute did not break new ground. Rather it attempted to codify principles and rules existing under the common law. Those principles rested on the conviction, widely held, that a person functioning as a trustee or in a role akin thereto, and having himself an economic interest in a subject coming up for decision in the course of the trusteeship, is precluded from acting in the matter. The conflict of interest between his duty as a trustee and his personal economic interest disables him from dealing with the matter in an impartial way. Hence he is disabled from dealing with it at all.

The philosophy on which conflict of interest rests was well summarized by Robins, J. in the Ontario case of Re Moll and Fisher (1979) 23 O.R. (2nd) 609; 8 M.P.L.R. 266; 92 D.L.R. (3d) 506. Speaking for the Divisional Court, and dealing with a Municipal statute on the subject but one whose principles are no less applicable at other levels of government, that learned Judge

said:

> "This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad prosciption enjoins holders of public offices within its ambit from any participation in matters in which their economic self interest may be in conflict with their public duty. The public's confidence in its elected representative demands no less."

What does our own Province say on the subject? The Legislative Assembly and Executive Council Conflict of Interest Act, referred to above, is comprehensive in scope. Not as comprehensive as it should be, says the government, which has just introduced a new Bill on the subject aimed at strengthening the provisions of the existing legislation. So far as the present Inquiry is concerned it is the existing legislation, not the proposed amendments, which are of concern. The conduct which is here the subject of investigation and assessment has to be measured by the requirements of the law as it stood when the conduct occurred, and not by the provisions of a law subsequently enacted.

A brief reference to Manitoba's statute may here be made, remembering that much of it - indeed most of it - has no application in the present Inquiry. What deserves some attention is Section 4

of the Act. That Section declares that where during a meeting there arises a matter in which a member or any of his dependants has a direct or indirect pecuniary interest, the member shall do three things:

disclose the general nature of the direct or indirect pecuniary interest or liability;

withdraw from the meeting without voting or participating in the discussion; and

refrain at all times from attempting to influence the matter.

Another important feature of the Act is found in Section 11(1). That section requires that within 15 days after the beginning of each session of the Legislature, every member and minister shall file with the Clerk of the Legislative Assembly a statement disclosing assets and interests in accordance with section 12. The latter section lists the assets and interests which must be disclosed. Section 17 prohibits a member or minister from receiving or agreeing to receive any compensation for services rendered or to be rendered to any person, corporation, partnership or organization in relation to any matter before the Legislative Assembly or a committee thereof, before the Executive Council or a committee thereof, or before any Crown agency. In the same spirit section 18 forbids the use by a member or minister of his influence for the purpose of procuring entry into a contract or other transaction, or to confer any benefit, in which the

member or minister or any of his dependants has a direct or indirect pecuniary interest. What these provisions are saying, in legalistic language, is that bribery and influence peddling are both forbidden. A penalty section, Sec. 19(1), then follows. It states that "Every member who is found to have violated any provisions of this Act shall be disqualified from office, and his seat in the Legislative Assembly shall be declared vacant." Removal from office, with its accompanying disgrace, would justly be regarded by any member as the ultimate in penalties.

A saving provision must here by noted. Section 23 provides for it in the following terms:

> "Notwithstanding anything in this Act, where a judge finds that a member violated a provision of this Act unknowingly or through inadvertence, the member is not disqualified from office, and the judge shall not declare the seat of the member vacant, in consequence of the violation."

An unknowing or inadvertent breach of the statute will not attract the penalty of disqualification from office. In other words mens rea is an essential ingredient of the conduct under question. It will be noted that the language used in this section is that of the courtroom. It has application only "where a judge finds...". A Commissioner, (who is not a judge) conducting an Inquiry under Part V of the Manitoba Evidence Act would not possess the same jurisdiction. If a Commissioner desired to make such a finding he surely could so declare, thus paving the way for a second or supplementary application, this

time to the court to formally make the finding which the non-judge Commissioner was unable himself to make.

So much, in greatly condensed form, for the statutory treatment of conflict of interest. A word now about the central figure in this controversy.

The Honourable Wilson Parasiuk became a Rhodes Scholar from the University of Manitoba in the mid-sixties. Not every Rhodes Scholar fulfills the promise of his student years. Wilson Parasiuk was a Rhodes Scholar who did. With a Master's degree in Political Science from the University of Manitoba, and with a similar degree in Economics, Sociology, and Politics from Oxford University, Parasiuk had a well-grounded background for the career in public service that he had evidently set for himself.

In 1968-69 he worked for the Federal Department of Regional and Economic Expansion on matters pertaining to regional disparities within Canada. This work brough him into contact with Manitoba officials and led to an invitation to him in late 1968 to come to Manitoba. He actually commenced his work as a Manitoba civil servant in January, 1970. His first role was that of an economic and social development planner within the secretariat of the Planning and Priorities Committee of Cabinet. Until the year 1977 he served in various capacities, dealing with divers problems, including Northern Manitoba Development,

Federal-Provincial negotiations, and others. During the last three years of his association with this Committee he was Secretary of the Cabinet Planning Secretariat.

In 1977 Parasiuk ran in the Provincial election and was elected. Now a member of the Manitoba Legislative Assembly he served in the ranks of the Opposition from 1977 to 1981. In the election of November, 1981 he was elected again, this time his party being in the majority. Soon thereafter he was sworn into office as Minister of Energy and Mines, with an additional duty as the Cabinet member responsible for the affairs of the Manitoba Hydro Board.

March, 1986 brought another election and another victory. Parasiuk was continued in office in the Cabinet, holding the same offices as before.

In May of 1986, because of allegations made in the media and in the House that he had acted inproperly and in conflict of interest, Parasiuk resigned from the Cabinet and asked that an impartial Inquiry be held with regard to those allegations. That was the genesis of this Commission of Inquiry.

There are two issues here, the consulting contract with WMC and The Brokerage. It would perhaps have been preferable to deal with each of the two issues in turn, separating the one from

the other. But that is not how the evidence found its way to the record. All or nearly all of the witnesses dealt with both issues, often moving from one to the other and back again. In some cases this treatment was probably regarded as necessary, on the view that it was the interplay of the two issues that brought about a conflict of interest. This view possession some validity. Where the evidence could clearly be segregated the Commission has done so. But complete segregation has not been possible. This is not to say that the Commission was thereby handicapped in its analysis of the evidence or in arriving at its conclusion. All that was lost from the merged treatment of the two issues was a certain tidiness. But that is something we can easily live with.

Much evidence was received in this Inquiry, some of it directly relevant, some of it less so. This is not said critically of either counsel or the witnesses. Anyone familiar with the court process - and the Commission tried very hard to act like a court - will know that there is often a discrepancy between what appears to be relevant in the early parts of a trial and what continues to remain relevant at the trial's end. It is for the presiding tribunal to assess and weigh the evidence and to ascribe to it such importance as it thinks it deserves. This the Commission has endeavoured to do, always with the knowledge that human judgment is a fallible thing and that, unless even-handed justice remains the constant and unforgotten goal, a descent into error may follow.

These words have a special relevance because of one feature of the proceedings in question. Our litigation is conducted on the basis of the adversary system, the plaintiff and his counsel presenting one point of view, the defendant and his counsel presenting the other. That system has not escaped criticism, some of it valid, but as of today it continues to be the system which we employ. At the base of it is the right of cross-examination. That right is an essential instrument for the discovery of truth. What a witness may say under the friendly blandishments of counsel upholding his cause may be radically altered under the stern questioning of opposing counsel. Indeed, even if the same answers are given by the witness the manner in which they are given may be visibly changed, to a degree causing the tribunal to lose confidence in the testimony of the witness. More than that. Sometimes the absence of cross-examination will result in important questions not being put to the witness. Their absence from the case may materially affect the result, often bringing about a miscarriage of justice.

In the proceedings of this Commission the phenomenon of a one-sided presentation became early discernible. The witnesses and their counsel all seemed to be on the same side, the side of Parasiuk. This was a public Inquiry, with public notice that the Commission would receive oral or written submissions that were relevant to the Inquiry. But no anti-Parasiuk witness made an appearance. This may have been due to

a genuine absence of evidence against Parasiuk. But audi alteram partem - "hear the other side" is an essential feature of proper court proceedings. Our Commission of Inquiry confronted the danger of virtually only one side being heard.

In that setting Mr. Raymond Flett, counsel fo the Commission, determined to do what he could to plug the gap, at least in part. When Mr. Parasiuk took the witness stand Mr. Flett assumed the role of opposing counsel and subjected Parasiuk to a cross-examination that was vigorous, searching and intelligent. Mr. Parasiuk may have been taken by surprise by the turn of events, but the Commission is pleased to assert that he responded to the challenge with dignity and wisdom, and as one guided by the white light of truth.

At the time of this event the Commission stated that Mr. Flett's course of conduct was in the best traditions of the Bar. The Commission repeats that assertion now, adding that regardless of the outcome all connected with the Inquiry must be happier that the other side was heard and not ignored.

The Commission turns now to a consideration of the allegation that the awarding to the company known as WMC Research Associates (Manitoba) Ltd. of a consulting contract in the sum of $40,081.00 created for Mr. Parasiuk a conflict of interest. That allegation does not stand alone. It is linked

to the building at 115 Bannatyne Avenue - The Brokerage. More specifically, it is alleged that Parasiuk awarded, or caused to be awarded, that contract to one who was a partner with him in The Brokerage. Here we have a case where the two issues come together. They may properly be considered together as well.

The indispensable ingredient in the charge here against Parasiuk is the existence of a partnership relationship between him and Douglas Davison. It is because the contract of the Manitoba Energy Authority was given to Parasiuk's alleged partner, Douglas Davison, that mischief arose. A partnership relationship is a very close relationship. Members of a partnership stand in a fiduciary character, one to the other. Each owes to the other the utmost in good faith, in honourable conduct, in what Edmund Burke (in another context) called "unsuspecting confidence". But all this applies only if a partnership relationship, in the ordinary sense of that phrase, is in existence.

What robs this theory of its foundation and causes it to fall like a house of cards is that The Brokerage was not a partnership in the ordinary sense in which that term has been used above, but included as well a category of "limited partners". Mr. Parasiuk and Mr. Davison were never more than limited partners. And, as will be apparent in a moment or two, such persons are not partners, in the usual and ordinary sense, but are rather investors.

It may well be that investor A is not even aware of the existence of investor B. Yet both may be limited partners in the same organization, firm, or entity. But to call them partners, without any qualification, is to make a mockery of language.

A quick look at some law in support of the special status or category of the limited partner. Part II of The Partnership Act CCSM Cap P.30 deals with Limited Partnerships. Some extracts from that statute are here cited:

"Sec.52. A limited partnership may consist of one or more persons, who shall be called 'general partners', and of one or more persons who contribute a specific or determinable amount, whether in cash, kind, specie, or money's worth or by any other means whatsoever, as capital of the partnership, who shall be called 'limited partners'".

"Sec.53 Subject to section 63, general partners are jointly and severally responsible as general partners are by law; but limited partners are not liable for the debts of a limited partnership beyond the amounts by them respectively contributed to the capital of the limited partnership; except that where a limited partner has already paid into the capital of the limited partnership the amount of his contribution, he shall not be further liable for any of the debts of the partnership".

"Sec.54(1) The general partners only are authorized to bind the partnership; but where a limited partner, to the knowledge of the general partners, takes part in the management of the partnership business, he has power to bind the partnership."

"Sec.54(2) The onus of proof as to knowledge under subsection (1) is on the general partners".

The heading immediately preceding Sec. 54 reads thus:

"General partners only to transact business, etc."

"Sec.62 A limited partner may, by himself, or his agent inspect the books of the firm and examine into the state and progress of the partnership business, and may advise as to its management".

"Sec.63(1) Where a limited partner takes an active part in the business of the partnership, he is liable as if he were a general partner, to any person with whom he deals on behalf of the partnership and who does not know that he is a limited partner for all debts of the partnership."

There are of course many more characteristics of a limited partnership. They all enforce the thesis that a limited partner occupies a very special position in the firm, a position different in a radical and fundamental way from that of a general partner. Mr. Parasiuk and Mr. Davison were once limited partners in The Brokerage. As such they were investors, they were perhaps shareholders, but they were not partners in the sense in which we normally think of that term, with its attributes of closeness, of participants in a joint venture, of co-workers in a common cause. Indeed Davison's testimony is that he never knew that Parasiuk had an interest in The Brokerage.

So the allegations that the contract went to a partner of Parasiuk, with the sinister implications accompanying that allegation, cannot justly be maintained.

The Commission will now review the testimony of the

witnesses in this Inquiry.

MR. DOUGLAS DAVISON

Mr. Davison's career as a Government civil servant began in 1972. His first position was with the Industry and Commerce Department of Manitoba. The following year he moved to the Department of Northern Affairs and remained there until 1978, when he took a post in the Finance Department. He remained there only for about six months. He then did some consulting work for about a year, following which he joined the Government of Saskatchewan. There he remained until the summer of 1981. He returned to Manitoba, joined a graduate studies program leading to his acquisition of a Master's degree in Public Affairs. He then participated in a Civil Service competition for the office of assistant deputy Minister of Manpower of Manitoba in the Department of Labour and Manpower, later known as the Department of Employment Services and Economic Security. He stayed in that Department until April, 1984, his resignation from the Manitoba Civil Service becoming effective on April 13th of that year.

Mr. Davison's employment record has been set forth in some detail. He is obviously a person with high credentials in the area of government service. It was to Davison, or more accurately to the corporation WMC, of which he was a principal, that the impugned contract was awarded. It is that contract which forms the basis of the charge against Parasiuk that he acted

improperly and in conflict of interest.

Mr. Davison's testimony on this subject is set forth at some length in the transcript. But a brief though highly relevant exchange between counsel and this witness summarizes the matter admirably. The following extract is taken from P.178 of the transcript:

By Mr. Flett:

"Q. Specifically, did you have any direct dealings with Mr. Parasiuk with respect to the Limestone Project?

A. No.

Q. Did you have any direct dealings with Mr. Parasiuk with regard to the subject matter of your contract and the reports that were provided to the Government or supplied as a result of the contract?

A. No.

Q. Now, you, of course, would not know of any indirect things that occurred with which Mr. Parasiuk may have been involved, but in terms of direct one on one dealings, as it were, in that respect, you did not deal with him directly with regard to these matters, is that correct?

A. That is correct.

Direct dealing by Mr. Parasiuk regarding the contract in question is here expressly negatived. As for indirect dealing Mr. Davison could not be expected to deal with the matter on the basis of personal knowledge. His answer to Mr. Flett's question on that point accordingly left the matter in some degree open. In this situation the Commission points out that nowhere in the entire record is there any evidence that Parasiuk, either directly or indirectly, had any role in the formation of this contract. Indeed he did not become aware of its existence until some time after the contract had been entered into. To charge that in awarding the contract to WMC Parasiuk acted improperly and in conflict of interest is to close one's eyes to the imponderable fact that Parasiuk had not acted in the matter at all.

Reference must also be made to Davison's connection with The Brokerage building. In late 1981, Davison agreed to purchase one unit as a limited partner. He had been approached on the subject by Mr. Michael Decter, who served for some time as Clerk of the Executive Council of Manitoba. Subsequently Davison made a career change. He left the civil service and entered the private sector as a consultant. He found himself having to cope with a reduced income, and decided to sell his unit in The Brokerage. The sale was made as of June 30th, 1984. The buyer was originally expected to be the remaining limited partners as a group but in the end it turned out to be only one of them, namely,

Grace Parasiuk. Grace is a sister of Wilson Parasiuk, and anyone who believes in guilt by kinship can try to make something sinister out of that. In making this observation the Commission is not suggesting any guilt on the part of Grace Parasiuk, whose purchase of Mr. Davison's unit in The Brokerage emerges as an ordinary commercial transaction and nothing more.

MR. MARC ELIESEN

This witness was the highest ranking civil servant among those who testified at this Inquiry. His academic training was taken at Sir George Williams University at Montreal. There he acquired a degree in Commerce, after which he did post-graduate studies in Economics at Carleton University in Ottawa. He was first employed as an economist with the Departments of Finance and of Industry and Commerce of the Dominion Government. In 1971 he joined the Government of Manitoba, serving first as Assistant Deputy Minister of Finance for two years and then as Planning Secretary to the Cabinet for a further two years. He then became Planning Advisor to the British Columbia Cabinet, a post which he relinquished in 1976. He then served in the private sector as an economic consultant. In 1982 he became Deputy Minister of Energy and Mines of Manitoba, holding this office until 1984. He then assumed his present post as Chairperson of the Board of Directors of Manitoba Hydro as well as Chairperson and executive director of the Manitoba Energy Authority.

Two factors emerged at this time requiring the attention and the action of the Government of Manitoba. Towards the end of 1983 it became abundantly clear that the Province was encountering significant success in its negotiations dealing with export sales of electrical energy. In addition, the Province was experiencing satisfactory negotiations with a number of companies involved in an energy-intensive area, particularly those considering aluminum smelting possibilities. One such company was the Aluminum Company of America (ALCOA) with whom a letter of understanding was reached on the feasibility of establishing an aluminum smelter in Manitoba. Here plainly was a situation presenting both a challenge and an opportunity to the Province.

Some mechanism had to be invoked to enable the Province to meet that challenge and to profit from that opportunity. It found that mechanism in the Manitoba Energy Authority. Until that time this Authority had not been functioning in an active way, Mr. Eliesen describing it as having "really been in a non-operational sense". What functions it performed were made possible by support provided by personnel from the Department of Energy and Mines and from Manitoba Hydro. Mr. Parasiuk,as the responsible Minister in this area, issued a memorandum to Mr. Eliesen on November 24, 1983 calling upon the Authority "to assume the lead role and proceed with negotiations related to the sale of electrical energy". The memorandum also touched on "the question of hiring staff and seconding personnel from Provincial Government departments and Crown corporations and engaging professional

services as the Authority deems necessary". It also noted that Sec.12(2) of The Energy Authority Act allows the Authority to contract for the supply of goods and services without any prior approval in the normal course of business, subject to the availability of funding. The Minister said that he would accordingly be requesting capital financing for the Authority for the next fiscal year, the amount thereof to be determined by the Treasury Board and Cabinet.

At a later point in his examination Mr. Eliesen was asked and answered this crucial question:

"Q. Was Mr. Parasiuk involved in the selection of WMC or Doug Davison to carry out the work that was covered in the WMC contract?

A. No, not at all."

Although not necessarily related to the issue of the propriety of Mr. Parasiuk's conduct, it may be of interest to look at the quality of the work done by Davison, the person to whom the contract was awarded. On that point Mr. Eliesen's testimony was as follows:

"Q. Was the work done by Mr. Davison worthwhile?

A. Well, without overly exaggerating, it was a

fundamental and excellent piece of work which led to the kind of success that we are now having with regards to the employment of northerners, particularly those of native ancestry.... A thousand people have already been trained, and trained with sufficient capacity that they are being hired in increasing numbers at the Limestone Generating Station, and the numbers bear no relationship whatever to the past.... In fact, our performance has been such so far that other utilities and other companies with interests in the north have been in contact with us and are coming to visit and evaluating what we've been doing over the last year and a half, and in no small way Mr. Davison and his report played a major factor in...that success."

Turning to the question of The Brokerage, Mr. Eliesen spoke thus:

"Q. .....do you have any interest in the Brokerage Building or do you know it or are involved financially...

A. I'm <u>now</u> aware of it but I have no interest in it whatsoever.

Q. Were you aware of it in 1984 to some extent that Mr. Parasiuk had an interest in that?

A. No."

The contract with WMC was not preceded by tendering. Concerning this subject Mr. Eliesen said:

> "...I would say that tendering is not a normal characteristic of the services for this kind of work, whether it's with a Crown corporation or with government as a whole. A particular firm (or a particular individual) is identified which has certain skills and a certain background, and certainly my experience within a government department is that, whether it's lawyers or architects or - or economists...they are selected, given their background and their ability to perform that work within... within reasonable financial parameters and reasonable time, and that is a practice that certainly we have followed at the Energy Authority, just the same practice as within government departments."

One further question, flowing from the last answer deserves to be recorded:

"Q. ...from your perspective (was) the awarding of this particular contract to WMC Associates...treated, handled by you, by Mr. Ferris, by the Manitoba Energy Authority at all, in any way differently from the way in which other similar contracts are

normally handled?

A. None whatsoever."

During the period when the Commission was reviewing the evidence and drafting its Report a matter arose that required attention and comment. This matter is set forth in a letter dated August 13th, 1986 from the Provincial Auditor, F. H. Jackson, C.A. to Mr. Flett, counsel for the Commission. That letter will be added to the record as Exhibit No. 64. It deals with two matters, namely, (1) Delegation of authority within the Manitoba Energy Authority, and (2) Approval of Contracts by Treasury Board when Mr. Wilson Parasiuk was present.

The Commission directed that copies of this letter be sent to the three counsel representing the parties appearing at the hearing - Allan MacInnes, Esq. Q.C., counsel for Mr. Parasiuk, Mr. Gordon McKinnon, counsel for the Manitoba Energy Authority, and Reeh Taylor, Esq. Q.C., counsel for Mr. Douglas Davison. They were requested to comment, if they desired. All three did reply, and their responses were made part of the record as Exhibit No. 65(a) (MacInnes), 65(b)(McKinnon)and 65(c) (Taylor). Mr. MacInnes and Mr. Taylor made no comment on the merits of this issue, while Mr. McKinnon expressed the view that the issue fell outside the scope of this Inquiry.

While the Commission tends to share Mr. McKinnon's view, it desires to add a few words on the merits of the subject.

Question No. 1.

Whether Mr. Eliesen had or had not a proper and lawful

delegation of authority from the Board of Manitoba Energy Authority to enter into, on its behalf, the contract with WMC Research may not be a matter calling for or appropriate to a determination more than two years after the event. Here is a contract that has been or is being duly performed. Its validity is not questioned by either of the parties thereto. Each gave and received what the contract called for.

More than that. Since the suggestion was made that the contract possessed an infirmity arising from a procedural or other error (i.e. unauthorized delegation) Mr. Eliesen sought and obtained a legal opinion on the point from an independent, non-government source. That opinion, which has been filed as part 7 Exhibit No. 65(b) declares that the delegation of authority to Mr. Eliesen was lawfully made.

But much more relevant that anything else is the undoubted fact that the question of proper or improper delegation is not the real issue which should engage our attention. It is Mr. Parasiuk's alleged misconduct that is of concern in this Inquiry. If that misconduct were established, it would scarcely be acceptable (at least from a moral viewpoint) for Mr. Parasiuk to argue that his misconduct was erased by a technical deficiency in the formation of the contract. And if misconduct were not established (which is the case here), it would be unnecessary and futile for the Commission to embark on a frolic

of its own in pursuit of the non-issue of proper or improper delegation.

Question No. 2.

This question raises the matter of approval of contracts by Treasury Board when Mr. Parasiuk was present. One may be puzzled why the question was raised at all, since in setting it forth the Provincial Auditor also gives the effective answer thereto. The question related to submissions by the Department of Government Services for increases in consulting fees with respect to existing capital projects. More specifially, it included a submission to increase the architectural fees in connection with the new Law Courts Building. The architectural firm was stated to be a tenant of the Brokerage Building. And Mr. Parasiuk, a member of the Treasury Board, was present at the meetings when the above submissions were made.

Had the matter ended there, a question requiring an answer could be said to have emerged. But the Provincial Auditor goes on to say: "Mr. Parasiuk testified at the Commission of Inquiry that in November, 1981 he had placed his holdings in a blind trust and that he did not know who the tenants were in the Brokerage Building". The question posed by the Provincial Auditor is there effectively answered. Without knowledge of the existing roster of tenants Mr. Parasiuk could not be guilty of the wrongdoing suggested in Question 2. The Commission

will have more to say on this matter when dealing with Mr. Parasiuk's testimony given from the witness box.

The Commission will now return to the task of reviewing and evaluating the testimony of the witnesses.

MR. VICTOR HRYSHKO

This witness did not detain the Inquiry very long. He is the Director of the Department of Co-operative Development and also the secretary of the Co-operative Loans and Loan Guarantee Board. He was called to testify concerning an application that had been made to the Board by the Winnipeg Arts Club Cooperative Inc. for a loan guarantee. He produced the file relating to that application. He also produced the annual report of the Board for the year ended March 31, 1985.

Counsel for the Commission then filed a number of documents relating to certain corporations whose names from time to time surfaced during the hearings of the Inquiry. All these corporations had some link with the 115 Bannatyne Avenue property. The documents consisted of annual returns, notice of change of directors, articles of incorporation, notice of change of registered office, a registration under the Business Names Registration Act for Working Margins Counsulting Research, and a filing under The Cooperatives Act for Winnipeg Arts Club Cooperative Inc. consisting of the Annual Return, as of December

31, 1984. Questioning of the witness, Mr. Hryshko, was deferred by counsel until they had an opportunity to examine the documents which had just been filed. In the result counsel evidently decided against questioning Hryshko, and he was not recalled to the witness box.

ALVIN FREDERICK MARTIN

Mr. Martin holds the office of Director of Special Audits under the aegis of the Provincial Auditor. He became a chartered accountant in 1961 and articled with the Provincial Auditor's office. From 1970 to 1974 he was with the Universities Grants Commission. In 1974 he applied for the position of Director of Special Audits, and was the successful applicant.

Moving on to the present Inquiry the Commission notes that the Minister of Finance instructed the Provincial Auditor to do a special audit relating to all Province of Manitoba transactions having to do with owners and tenants and former tenants of the Brokerage Building during the period commencing March 31, 1979 and terminating on May 31, 1986. All documentary material bearing on the question should be reviewed. The Provincial Auditor turned the matter over to Mr. Martin for appropriate action.

A review then followed. It was broad in its nature. The Director of Special Audits had requested production of all documentary material bearing on the question. In due course he

received a call from the Department of Energy and Mines advising that the information requested was available. Mr. Jim Martin, a colleague of Alvin Frederick Martin, was the person delegated to conduct the actual review. He met with officers of the Department of Energy and Mines, first with Mrs. Zonya Johnstone, who is the Executive Director of Administration with the Department of Energy and Mines, and later with Henry Mordarski, an official in that Department.

Evidence was given of the manner in which monies were disbursed on behalf of Manitoba Energy Authority, including an analysis in some detail of the disbursements relating to the WMC contract. In June 1984 a trust account in the sum of $250,000 was established for the Manitoba Energy Authority in the Department of Finance. Monies would be transferred into the trust account as funds were required, and then payments would be made out of that trust account. In October 1984 the Eric Jobs Fund (the abbreviation stands for Economic Resource Investment Committee) voted an amount of $125,000 specifically with respect to Limestone expenditures incurred by the Authority.

This witness confirmed that the Province of Manitoba through the Department of Energy and Mines provides administrative services to the Authority without charge. The staff of the Department of Energy and Mines were in a sense doing the book-keeping and issuing the cheques on behalf of the Manitoba Energy

Authority. The Department would prepare the vouchers for the Department of Finance, and Finance, as the body responsible for issuing all cheques for payments out of the consolidated Fund, would then issue the appropriate cheque or cheques.

Mr. Martin was a cautious witness, never omitting to point to a qualification, if qualification could be found. But caution can sometimes be carried too far, as this extract from the evidence will indicate.

P.210: Mr. Martin is the witness and Mr. Flett is the examiner:

"Q. Just to put the final cover on that, in fact, Mr. Martin, during the course of the examination, is it right that these were normal, routine reimbursements made to Mr. Parasiuk and are unrelated in any way to either the WMC contract or the Brokerage Building?

"A. In general, I would say that is correct. However" - and here comes the cautious qualification - "we don't know whether part of the specific expense account may have related to taking somebody out for dinner that was related, either a partner or a tenant of the building. There's no way that we would know that, so other than that, there's no indication that it relates to payments with respect to the Brokerage Building."

The cautious qualification is based not affirmatively

on something we know, but negatively on something we do not know. Evidence stronger than this is required to establish improper conduct on the part of Wilson Parasiuk.

PETER FERRIS

Mr. Ferris holds the post of Employment Services Officer of the Manitoba Energy Authority. He has been in service with the Province of Manitoba since 1972. His first job with the Province was with the Department of Education in a program called New Careers. It was a new program and he was designated as its first Director of Education. He described his duties thus: "The program is a combination - it still is - of on-the-job-training and classroom training, designed to provide people with exit qualifications that would allow them to do satisfactorily the job they were being trained for". The program was aimed particularly at northern people and more particularly at northern native people in a city residence. Mr. Ferris served in that program for a period of four years.

For the period from 1976 to 1982 Mr. Ferris worked in "a variety of post-secondary educational programs at the Province's universities and colleges again designed to get people into post-secondary education who normally lacked the prerequisites but, again, had motivation and, with the correct mix of academic assistance, financial assistance, counselling, would be able to complete all requirements of degree courses, including teacher

training programs in Northern Manitoba, social work programs in Northern Manitoba, northern nursing program, a pre-medical studies program that led to a medical and dental program at the University of Manitoba and various programs in the inner city also".

In 1982 Ferris was hired to work in the newly established Manitoba Jobs Fund. The person to whom he reported was Douglas Davison. He served with Mr. Davison for almost two years, until Davison left government employment. Ferris then had discussions with Mr. Eliesen on the subject of his joining the Manitoba Energy Authority. He was invited "to generally co-ordinate all training and employment measures related to the construction of the Limestone Dam, particularly insofar as northerners were concerned... with some obvious concern about the involvement of northern native people". Ferris accepted this post.

The two immediate considerations were (1) to examine efforts made in the past, and (2) "to develop a concept regarding the two elements of a successful strategy; means by which training could be organized and delivered to produce a flow of northern native workers qualified to undertake the various jobs on site and a means to ensure, rather than to hope, that a qualified northern native people would be hired".

Concerning efforts made in the past Ferris recalled that

in the 1970's, associated with the Hydro construction, there had been a Northern Manpower Corps. "We wanted to know what had happened there and what the lessons were. Second, we wanted to sort out, in pretty short order, the concept that we were dealing with, what would be involved much more precisely in terms of native preference, northern preference and training for employment".

How would they proceed to solve the problem confronting them? Mr. Ferris says: "I made a redundant suggestion to Mr. Eliesen that we contact WMC and Associates. I found that, in fact, he had already done so with a mind to seeing if their services could be sought to provide us with some assistance in terms of research and conceptual planning".

Asked why he had put forward the name of Davison of WMC, Ferris said: "One, he was available... I knew that he had a very intimate knowledge of Northern Manitoba - I don't mean geographically; I mean in terms of its economic structure, its human resource structure... I knew, of course, that he had considerable experience within government, which was important, because whatever we did would be done within government, and I also knew that he was a - - is a clear thinker and would be helpful on the conceptual basis".

Mr. Ferris was asked if he had made any inquiries of anyone else as a suitable candidate for the post in question. He

said he had not, and rested his decision on two grounds: "Well, I think it was a combination of two things. One, a known quantity of who was available; second, very severe time restraints. We had to do some things very quickly indeed".

Mr. Ferris was asked whether Mr. Parasiuk was involved, directly or indirectly, in the granting of the Manitoba Energy Authority contract to WMC. His answer was, "Absolutely not".

MR. A. LIONEL WEINBERG

Mr. Weinberg is a practising member of the Bar of Manitoba. His entry into these proceedings stems from a trust agreement made in November, 1981, between Wilson Parasiuk as the donor of the trust and Mr. Weinberg and Ernest Alfred Kurbis, a chartered accountant, as the trustees thereunder. This kind of agreement is commonly known as a "blind trust" agreement. It is a very useful vehicle to the holder of a public office, enabling him to avoid a breach of conflict of interest rules or principles. Conventionally a public servant, and more particularly a public servant with means, will turn over his assets to trustees, giving them authority to transfer these assets and to replace them with other assets. The purpose of such transactions is to alter the contents of a person's portfolio so that he himself will not know of what it consists. If thereafter he has to deal with or make a decision with regard to a company called A, he will not know

whether his altered portfolio contains any asset of or related to company A. Hence no conflict of interest can arise from his dealing with the matter.

Further, the public servant will usually resign from directorships of commercial companies. Mr. Parasiuk did so resign. Mr. Weinberg testified that after the trust agreement was executed and after the necessary transfers consequent thereon were made, he never, at any time, discussed the affairs of the trust with Mr. Parasiuk. That of course was the correct and legal thing to do. By entering into the blind trust agreement Mr. Parasiuk lost the right, during its continuance, of discussion or management in any form of matters embraced by the trust.

One subject requires a word of comment. Mr. Parasiuk's signature appears on a document dated July 19, 1982, a document required for filing in the Corporations Branch. But that date is about seven or eight months after the date of the establishment of the blind trust. Clearly an error was made. Mr. Weinberg gave his view on how that error arose. He said that the signatory to that document should have been Wilma Parasiuk, wife of Wilson. When his office sent out that document along with others for signature the initials W.P. were pencilled in to indicate the place where the signature should be affixed. Wilson Parasiuk, possessing the same initials, incautiously signed the document. No transaction involving a possible conflict of

interest existed here. A very human error had been made, and Mr. Weinberg's explanation of how it had been made appears to be reasonable. The Commission accepts that explanation. No wrongdoing on the part of Wilson Parasiuk should be laid at his door for this unintentional error.

ERNEST ALFRED KURBIS

This witness, a chartered accountant and a partner in Dunwoody and Company, was the co-trustee of Mr. Weinberg in the blind trust agreement set up by Mr. Parasiuk. He corroborated the evidence that had been given by Mr. Weinberg. In addition he testified about his role in helping Mr. Parasiuk to complete the statement of assets and interest under the Legislative Assembly and Executive Council Conflict of Interest Act, C.C.S.M. Cap. L 112, Sec. 11 to Sec. 14. That statement was duly completed and filed within the required time.

PATRICIA ANNE PARK

In the month of December, 1983, Ms. Park became a special assistant to the Minister of Energy and Mines, a post which she still retains. In that capacity she attended a meeting on May 25, 1984 in Mr. Eliesen's office. Others present at that meeting were Mr. Eliesen himself, Mr. Doug Davison, Mr. Doug McArthur, and Mr. Peter Ferris. Asked to explain why she was at the meeting, she said: "I would have been at the meeting because the matters relating to the enhancement of native and

northerner opportunities at hydro developments were a major commitment of the Pawley government, and because of my role as special assistant to the Minister, I had dealt with some case work of northerners concerning their interest in Hydro projects and Hydro development". She was asked if she had reported to her Minister on the meeting in question. She replied that she had not, explaining that answer by stating that she would red-flag a particular item if it raised some concerns. But if that item simply involved the implementation or furtherance of government policy there would be no need to report it to her Minister. In that regard the following extract from her testimony at the hearing will be explanatory and instructive:

P.296 The examining counsel is Mr. MacInnes.

"One of your primary roles is to serve as the Minister's eyes and ears at various meetings having to do with various subject matters, correct?

A. One of my roles is to keep myself informed in case there are issues that should be raised with the Minister, yes.

Q. But in doing that, would it be fair to say that many of the meetings you attend and many of the things you hear at these meetings never get reported by you to the Minister because, in your judgment, there's no need to so report?

A. That would be correct.

Q. And indeed, when you say red-flag, would it be correct to say that if you were at a meeting where something is discussed that appears to be

a problem or appears that it might become a problem or a matter of public debate, that's the kind of thing that you might report to the Minister?

A. That's correct.

Q. But so long as things that are happening at meetings are being done in pursuit or conformance to government policy and seem to be going along smoothly, not awry in any way, you simply attend, observe and hear and let matters continue without making a report to the Minister?

A. That's right.

Q. And this meeting of May 25 was such a meeting?

A. Yes."

Even if we assume that among the items discussed at the meeting was the Davison contract, no conflict of interest issue arises therefrom. To say that Ms. Park's knowledge, automatically becomes Mr. Parasiuk's knowledge is to condemn him without wrongdoing on his part. Vicarious liability is a phrase encountered from time to time in civil litigation. A master may in some cases be vicariously liable for an act done or not done by his servant. But that principle has no application to the issue or issues involved in this Inquiry. It should not be forgotten that a finding against Mr. Parasiuk could involve the vacating of his seat in the Legislature. Such a drastic

consequence should not result without wrongdoing, without a guilty intent, on his part - and such has not been established.

R. E. BAILEY

Mr. Bailey was identified as the Coordinator of Cooperative Relations, Department of Cooperative Development of Manitoba. Prior to assuming that post Mr. Bailey served as special assistant to Wilson Parasiuk. While he was such a special assistant he was appointed to the Board of Directors of the Manitoba Energy Authority. Asked if he actually attended meetings of the Board of the Manitoba Energy Authority, Mr. Bailey said that there were no meetings of the Board. He did recall a telephone discussion once regarding a power sale; but there were no board meetings while he was a member.

Mr. Bailey was asked if he had anything to do with the granting of a contract to WMC. His answer was that he didn't know anything about the contract or how it was let. He wasn't involved in it "in any way, shape or form".

On the subject of The Brokerage Mr. Bailey stated that he owned a half unit. He and his wife had together bought a single unit, each paying half the cost. It was Michael Decter who had introduced him to the project. Decter expressed the view that this was a good long-term investment. At that time Mr. Bailey did not know that Wilson Parasiuk had any connection with

The Brokerage. He ascertained this later but was unable to pin-point the precise month when he had acquired this information. He was certain, however, that it was some time between January 1982 and October 15th, 1983, the period when he served as special assistant to Wilson Parasiuk.

Reference was made to a meeting in or about February, 1982, of the investors in The Brokerage. Grace Parasiuk was present. He did not ask her if her brother Wilson was an investor in the project. Asked by Commission Counsel why he had not put this question to Grace, Bailey replied that he did not think it was any of his business to ask such a question. He described the meeting as one in which every member, going around the table in sequence, introduced himself or herself to all present. There were other meetings of the members in subsequent months, Mr. Bailey estimated their number as six or seven. He attended all but one. Wilson Parasiuk was not present at any of them.

Mr. Bailey was examined on his role in the formation of the Winnipeg Arts Club. The relevance of this is that this club later became a tenant in the Brokerage Building. Mr. Bailey wrote a letter dated February 16, 1984 to Mr. Derrick Mazur who was the Chairperson or the acting Chairperson of that Club. There was talk that the Arts Club might be organized as a cooperative. There was also talk about the Club renting space in downtown Winnipeg, and 115 Bannatyne Avenue was one of the buildings mentioned in

that regard. Mr. Bailey, as an employee in the Department of Cooperative Development sensed that he should make his position clear - namely, that if they sought organization as a cooperative they should know that he would be unable to sign any of the documents. Nor would he be able to participate in the discussion relative to 115 Bannatyne Avenue, since he had an interest (albeit, a very small one) in that building.

It appears that the Winnipeg Arts Club made application to the Cooperative Loans and Loans Guarantee Board in November, 1984 for Provincial Government Assistance, either by way of loan or loan guarantee. Mr. Bailey wished to make it clear that he was not a participant in that venture, either at the Winnipeg Arts Club end or at the Loans and Loan Guarantee Board end.

Reference was made to a grant to the Winnipeg Arts Club of $50,000.00 under the MCAP program, the letters standing for Manitoba Community Assets Program. Mr. Bailey said that he first became aware of this in January or February, 1985, after the event in question. Again he wished to make it clear that he had no role whatever either in the application end or in the granting end.

If anyone were charging Mr. Bailey with improper conduct or with breach of the rules respecting conflict of interest, it is plain that such a charge could not be justly sustained. But of course there is no such charge against Mr. Bailey. His

introduction into the proceedings of this Inquiry must rest on the fact that he was at one time a special assistant of Mr. Wilson Parasiuk. With Bailey innocent, how can Parasiuk be guilty? There has been a lot of reaching here; indeed all the way into left field.

MR. WILSON PARASIUK

Mr. Parasiuk testified twice at this Inquiry. He was its first witness and its last. The Commission has already commented on Mr. Parasiuk's evidence as originally given. The Commission has also dealt with the evidence of other witnesses as it bore upon the conduct of Parasiuk. A final word or two arising from Parasiuk's second appearance on the witness stand may be made before the Commission moves on to the statement of its conclusions.

Parasiuk said in his testimony that he thought he had a good chance of being in the Cabinet following on the N.D.P. victory in November, 1984. He therefore wanted to make sure that no conflict of interest situations should arise. So after discussions with lawyers and accountants he decided to employ the technique of the "blind trust". Thereafter he took scrupulous care to avoid either discussions or actions that might be inconsistent with the purpose or the spirit of the blind trust which he had created. But let him speak for

himself on that:

P.384 "I established a blind trust. I went out of my way to do so. I indicated to the Premier what existed and I never followed up at all, and I don't find that unusual... You don't set up a blind trust and then run around trying to, in a sense, to subvert the blind trust. I didn't do that. So I have no knowledge of anything with respect to The Brokerage Building and I do not think that untoward at all".

A word on the question of Mr. Parasiuk and Mr. Davison being business partners in The Brokerage. Again, Mr. Parasiuk will speak for himself:

P.404 "According to every legal definition I know of that term 'business partner', I do not think that I was...a business partner of Mr. Davison's in any way, shape or form... I'm an investor in W2 Enterprises, which has a share in a company called WSG Properties, which has a limited partnership investment,...like a share holding in an entity. I am not a partner of Mr. Davison's."

Once again - for the Commission dealt with this matter at an earlier stage of this Inquiry - the Commission agrees, adding only that this is a central and crucial issue in this Inquiry.

C O N C L U S I O N

The Commission's first word by way of conclusion must be one of thanks to those who participated in this Inquiry. Their labours lightened the burden that rested on the Commission. Sincere gratitude is therefore expressed, first of all, to the counsel who from its beginnings to its termination participated in and advanced the cause of this Inquiry. These counsel are: Mr. Raymond Flett, counsel for the Commission; Mr. A. D. MacInnes, Q.C., appearing for Mr. Parasiuk; Mr. J. F. R. Taylor, Q.C., Counsel for Mr. Douglas Davison, and Mr. Gordon A. McKinnon, counsel for the Manitoba Energy Authority.

Thanks are due as well to counsel who participated in the Inquiry on a more limited basis. These include Mr. W. Olson, Q.C., co-counsel for the Manitoba Energy Authority; D. Biberdorf, co-counsel for Mr. Douglas Davison; D. Chomiak, counsel for Patricia Parks; W. G. McFetridge and J. Piche, counsel for the Province of Manitoba.

An additional word of thanks is due, and is here heartily given to Mr. Jack Watson of the Court of Queen's Bench for his helpfulness in providing a courtroom for the hearings of the Commission, and to Liz Ranick for her assistance in acting as Clerk of the Court during the Commission's hearings.

On the last day of the hearing of this Commission a

request was made by Mr. Taylor that the Commission should recommend the payment by the Province of Manitoba of the costs incurred by all the parties. That request has since been renewed. The Commission, however, does not think it would be appropriate for it to make such a recommendation. This of course does not foreclose the right of any of the parties to seek such a result by an approach directly to the Attorney-General on behalf of the Province.

The evidence on the Parasiuk Inquiry is all in; the documents bearing on the controversy (some less so than others) have been filed; the testimony has been considered, assessed and weighed; and all that remains is for the Commission to announce its verdict. The Commission will now do so, first indicating that this is not a border-line case, nor a case in which the evidence, either in volume or weight, confronted the Commission with a difficulty of choice. Viewing the matter as a whole the Commission has concluded that neither of the two charges (the WMC Research contract or the 115 Bannatyne Avenue matter) has been established by the evidence. Indeed from Mr. Parasiuk's viewpoint, the matter can be placed on higher ground than that. The evidence establishes that Mr. Parasiuk was not guilty of either the first or the second charge set forth in Order-in-Council No. 550/86. The Commission now reports to the Attorney-General of Manitoba accordingly.

Samuel Freedman
Commissioner.